Nos. 418, 419

In the Supreme Court of the United States

OCTOBER TERM, 1946

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

E. C. ATKINS AND COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURTS OF APPEALS FOR THE SIXTH AND SEVENTH CIRCUITS

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The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review a decree of the United States Circuit Court of Appeals for the Sixth Circuit entered on April 4, 1946 (*Jones*, R. 118)[1]

[1] Record references relating to the two respondents herein will appear as follows: Jones & Laughlin Steel Corporation (*Jones*, R. —); E. C. Atkins and Company (*Atkins*, R. —).

setting aside an order of the Board issued against Jones & Laughlin Steel Corporation, and a decree of the United States Circuit Court of Appeals for the Seventh Circuit entered on May 31, 1946 (*Atkins*, R. 322), setting aside an order of the Board issued against E. C. Atkins and Company.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Sixth Circuit in the *Jones & Laughlin* case (*Jones*, R. 119–122), is reported in 154 F. 2d 932. The opinion of the Circuit Court of Appeals for the Seventh Circuit in the *Atkins* case (*Atkins*, R. 320–322), is as yet unreported. The original opinions of the circuit courts of appeals in the *Jones & Laughlin* (R. 83–89) and *Atkins* (R. 348–366) cases are reported, respectively, in 146 F. 2d 718, and 147 F. 2d 730. The order of this Court granting writs of certiorari, vacating prior judgments entered by the courts below, and remanding the cases for further consideration is reported in 325 U. S. 838. The findings of fact, conclusions of law, and orders of the Board in these two cases (*Jones*, R. 61–68, 73–74; *Atkins*, R. 30–42) are reported in 53 N. L. R. B. 1046 and 56 N. L. R. B. 1056, respectively. The decisions of the Board in prior representation proceedings which form part of the record in these cases (*Jones*, R. 52–55; *Atkins*, R. 5–8), are re-

ported in 49 N. L. R. B. 390 and 52 N. L. R. B. 1470, respectively.

JURISDICTION

The decree of the Circuit Court of Appeals for the Sixth Circuit in the *Jones & Laughlin* case was entered on April 4, 1946 (*Jones*, R. 118). The petition for rehearing filed by the Board was denied on May 20, 1946 (*Jones*, R. 134). The decree of the Circuit Court of Appeals for the Seventh Circuit in the *Atkins* case was entered on May 31, 1946 (*Atkins*, R. 322). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. The question presented by the *Atkins* case is whether persons who are employed to guard the property of a private employer, who are compensated by that private employer at rates fixed by him, and who are also civilian auxiliaries to the military police of the Army of the United States, are "employees" within the meaning of Section 2 (3) of the National Labor Relations Act.[2]

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[2] The Circuit Court of Appeals for the Seventh Circuit substituted for the Board's findings of fact concerning the incidents of the economic relation between the plant guards and the company, findings of its own. One glaring example

2. The questions presented by the *Jones & Laughlin* case are whether, in the light of Section 10 (e) of the Act, the court below could properly consider:

(a) the effect the plant guards' deputization by local police authorities upon their collective bargaining rights, no facts concerning such deputization having been presented to the Board.

(b) whether the Board erred in not restricting the freedom of choice of militarized and deputized plant guards to organizations not representing rank and file employees, no objection on this ground having been raised before the Board.

3. Assuming that these matters could properly have been considered by the court below, a further question presented is whether the Board, in the exercise of its administrative discretion, may properly require an employer to bargain collectively with a labor organization as the representa-

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of the error into which the court fell in so doing is its holding that the Atkins Company was a cost-plus-a-fixed-fee contractor whose labor costs were borne by the Government (*Atkins*, R. 355). The record plainly shows that this was not a fact (*Atkins*, R. 31, 332–333, 326–327) and the inferences as to employer-employee relationship drawn from this supposed fact by the court below must, therefore, fall.

Since we believe that the court below erred in substituting its findings for those of the Board, the case thus presents, in addition, the question whether the Board's findings of fact are supported by substantial evidence. This question need not necessarily be decided, however, since it is our position that even on the facts as found by the court, the Board's order should be enforced.

tive of the employer's plant protection employees, when those employees are members of the civilian auxiliary to the military police of the Army of the United States, or when they are deputized by local police authorities, if the labor organization which represents them also represents a bargaining unit composed of the employer's maintenance and production employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are set forth in Appendix A, *infra*, pp. 39–43. The pertinent regulations of the War Department relating to the guard force of the civilian auxiliary to the military police, established pursuant to Executive Order No. 8972, dated December 12, 1941 (6 Fed. Reg. 6420) are set forth in Appendix B, *infra*, pp. 44–71.[3]

STATEMENT

The formal proceedings in both of these cases followed an identical pattern. In each case, following the usual proceedings under Section 9 (*c*) of the Act, the Board issued a decision and di-

[3] The Circuit Court of Appeals for the Seventh Circuit correctly held in the *Atkins* case that these War Department regulations are public documents of which the Board and the courts may take judicial notice (*Atkins*, R. 353, n. 1). Cf. *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 483–484.

rection of election finding that the plant protection employees involved were "employees" within the meaning of the Act, that they constituted an apropriate bargaining unit, and that they were entitled to the collective bargaining rights guaranteed by the Act, despite the fact that they were civilian auxiliaries to the military police (*Jones,* R. 52–55; *Atkins,* R. 5–8). The petitioning union in each case was selected by a majority of the eligible employees in the election and was certified by the Board as the representative of the plant protection employees (*Jones,* 34–35; *Atkins,* R. 17).

Thereafter, in proceedings under Section 10 (c) of the Act, the Board issued decisions in which it found that each of the respondents had refused to bargain collectively with the certified representative of its plant protection employees, thereby engaging in unfair labor practices within the meaning of Section 8 (5) and (1) of the Act (*Jones,* R. 73–74; 61–68; *Atkins,* R. 30–42). The Board ordered each respondent to cease and desist from refusing to bargain with the named representative of its plant protection employees; to cease and desist from engaging in any like or related acts or conduct interfering with, restraining or coercing the employees; upon request to bargain collectively with such representative; and to post appropriate notices (*Jones,* R. 73–74; *Atkins,* R. 32–33).

The evidence in support of the Board's findings, in each of these cases, that the plant protection employees herein, despite their membership in the civilian auxiliary to the military police, were "employees" within the meaning of the Act, and entitled to exercise the bargaining rights guaranteed thereby may be summarized as follows:

In December 1943, when its refusal to bargain occurred (*Atkins*, R. 39), respondent, E. C. Atkins and Company, an Indiana corporation, was engaged in the manufacture of saws, tools, and armor plate at the two plants here involved, located in Indianapolis, Indiana (*Atkins*, R. 36–37, 276–278).[4] These products were sold to jobbers, dealers, subcontractors, and direct to manufacturing consumers, as well as to the United States Government (*Atkins*, R. 277). In June 1943, when its refusal to bargain occurred (*Jones*, R. 64–65), respondent Jones & Laughlin Steel Corporation, a Pennsylvania corporation, was engaged in the production of ingot steel for the national war effort at its Otis Works, located in Cleveland, Ohio, the plant here involved (*Jones*, R. 52–53, 63, 3–4, 43–44). At the time the refusals to bargain occurred, the plant-protection employees at the plants of both companies were

[4] One of the two plants had been owned and operated by the company since 1857; the other plant, known as the "Fall Creek Ordnance Plant," was owned by the United States Government but operated by the Company (*Atkins*, R. 277).

members of the civilian auxiliary to the military police (*Jones*, R. 53, 6–7, 8; *Atkins*, R. 7, 31; 45–46, 52, 68–69, 85–86, 277–278) a guard force established by the War Department on July 2, 1942 (Appendix B, *infra*, pp. 67–71) as a security precaution for the protection of strategic premises and materials important to the prosecution of the war.

On March 17, 1943, the War Department issued regulations defining the purpose of the civilian auxiliary to the military police and the duties, obligations, and employment status of plant-protection employees who became members thereof (Appendix B, *infra*, pp. 44–67). Under these regulations, the stated purpose and basic duty of such a plant-protection force is "to provide internal and external protection of the plant against sabotage, espionage, and natural hazards [and] to serve with the Army in providing protection to the plant and its environs in emergency situations" (Appendix B, *infra*, p. 46). Within the scope of this broad assignment, the specific functions of the guards in the instant cases did not vary materially from plant to plant. They were required generally to watch the plant gates and identify employees entering or leaving the plant, quell disturbances in and around the plant, enforce plant safety rules, keep a lookout for fire hazards, and in short to police the plant premises with a view to preventing destruction of

property and interruption of production (*Jones*, R. 6, 8–9; *Atkins*, R. 52–53, 80, 88).

At the time the guards were made members of the civilian auxiliary to the military police, they were required, in accordance with the War Department regulations (Appendix B, *infra*, pp. 52–53, 69–71), to enter into a written agreement with, and give a pledge of loyalty to, the United States (*Jones*, R. 53, 6–8; *Atkins*, R. 31; 54–57, 103–104). The regulations also subjected the guards to certain of the Articles of War (Appendix B, *infra*, pp. 50–54, 68) and required them to undergo not more than one hour a week of military training (Appendix B, *infra*, pp. 62–63).[3] The plant guard forces in the instant cases received one hour a week of military training (*Jones*, R. 6–7; *Atkins*, R. 57, 79).

Subject to the proviso that a member of the civilian auxiliary to the military police "may not be employed or dismissed and may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant's guard force would be impaired and declines to give his approval thereto" the War Department regulations provide that "militarization of plant guard forces does not change the

[3] The regulations provide that military training may exceed one hour per week only with the approval of the plant management (Appendix B, *infra*, p. 62); this is because the private employer must compensate the guards for time spent in such training.

existing systems of hiring, compensation, and dismissal; all remain primarily a matter between the guards and the plant managements [and] guards in the employ of a private employer may, as heretofore, be dismissed by that employer * * *" (Appendix B, *infra*, pp. 54–55). In the instant cases, the guards were hired through the companies' regular employment channels and were thereafter, upon approval by the military authorities, sworn into membership in the civilian auxiliary to the military police (*Jones*, R. 53–54; 4–14; *Atkins*, R. 31; 52–53, 68–71, 82–83, 91–92). The employer could discharge a guard from its employ subject to the same limited veto available to the military in the case of a company's hiring of a guard (*Jones*, R. 53–54; 9; *Atkins*, R. 31; 53–54, 72, 81, 84). Guards employed by respondent Jones & Laughlin prior to the militarization of the company's guard force were retained by the company after militarization, and became members of the civilian auxiliary to the military police, upon approval by the military (*Jones*, R. 9–10).[¶]

The companies carried the guards upon their regular pay rolls, unilaterally determined their

[¶]Respondent Atkins recruited the bulk of its guard force after the militarization program went into effect (*Atkins*, R. 52, 54, 68, 85, 88). The watchmen who had been employed by the company prior to the effective date of the program, however, were sworn in as civilian auxiliaries to the military police and remained on their jobs (*Atkins*, R. 88).

rate of compensation, and paid their wages; after making appropriate payroll deductions (*Jones*, R. 53–54; 9, 14; *Atkins*, R. 31, 53–54, 82, 85, 93).[1] The War Department regulationss preserved to the plant guards a status indistinguishable from other employees of a company insofar as they were affected by "employee benefits" such as "social security, workmen's compensation, and employer's liability" under insurance policies covering the company's employees generally (Appendix B, *infra*, p. 57; *Jones*, R. 53; 14). In accordance with the regulations of the War Department (Appendix B, *infra*, pp. 58–59, 60–61), the companies furnished the guards with uniforms and arms (*Jones*, R. 8; *Atkins*, R. 52–78).

The War Department regulations provide that "control" of members of the civilian auxiliary to the military police "will be exercised * * * through the plant management except at drill and except in emergency situations," and that "although the plant guard officers will be in command at all times, they will not supplant the civilian guard officers, and unless expediency demands otherwise will exercise their authority through the chain of command established by the

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[1] In the *Atkins* case, the record is clear that the cost of the guards' wages was borne by the company and not by the United States Government; the company did not operate on "a cost-plus basis" (*Atkins*, R. 332–333, 326–327).

plant management" (Appendix, *infra*, p. 54).[8] In both of the instant cases, the guard force was under the immediate supervision of a chief guard and his lieutenants, all of whom were civilians (*Jones*, R. 53; 8–10; *Atkins*, R. 31; 68–71, 77–79, 81–82). The hours of work and work assignments of the individual guards were determined by civilian authority (*ibid.*). In the *Atkins* case, the chief guard without, so far as appears, even notifying or consulting the military authorities, established a system of rotating shifts for the guard force (*Atkins*, R. 78–79). Likewise, guards were promoted to supervisory positions on the guard force, at increased wages, upon recommendations made to the company by the chief guard, without informing the military authorities (*Atkins*, R. 82).

As to "labor relationships", the War Department regulations provide that "Auxiliary Military Police are permitted to bargain collectively, but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police. * * * The Auxiliary Military Police should be represented in collective bargaining with the management by a bargaining unit other than that composed of the production and maintenance workers, although

[8] The regulations further provide that "at civilian-operated plants", orders will be issued by the military authorities to the plant guards "only after consultation with and, if possible, concurrence by the plant management" (Appendix B, *infra*, p. 53).

both bargaining units may be affiliated with the same labor organization" (Appendix B, *infra*, p. 58). To clarify this provision of its regulations the War Department, on July 10, 1943, issued a memorandum interpreting "the same labor organization" to mean "the same trade union local" (*Jones*, R. 100–101).

In the *Jones & Laughlin* case, the same union which represented and sought to bargain for the guards also represented the employers' production and maintenance employees but in separate and distinct bargaining units.[9] In the *Atkins* case the plant protection employees were represented by a different union from the other employees.[10]

Upon the basis of the War Department regulations, the evidence adduced, and in accordance with its established administrative policy with

[9] Although at the time of the hearing before the Board a separate local had not been established for the unit of plant protection employees (*Jones*, R. 1, 49–50, 55–56), following the close of the hearing, the Board was advised by its regional director, and in turn advised the court below (*Jones*, R. 92), that the union involved, the United Steelworkers of America, had chartered a separate local for the plant protection employees involved in that case.

[10] The guards in the *Atkins* case were represented by Plant Protection Lodge No. 1683, affiliated with International Association of Machinists, District 90 (A. F. of L.), while the Company's production and maintenance employees, with the exception of sawsmiths, were represented by the United Steelworkers of America (C. I. O.). The sawsmiths were represented by Sawsmith's Local Union No. 18,548 (A. F. of L.) (*Atkins*, R. 85–88, 162–173, 304–305).

respect to militarized plant guards (*infra*, pp. 21–26), the Board found that the militarized guards in each of the cases at bar were "employees" within the meaning of the Act and entitled to the collective bargaining rights guaranteed thereby (*Jones*, R. 73, 53–54; *Atkins*, R. 31–32, 7). Additionally, in the *Jones & Laughlin* case, although respondent had not contended that if the guards were to be deemed "employees" within the meaning of the Act, they should nevertheless be denied the right to select as collective bargaining representative a union which also represented a separate bargaining unit of production and maintenance employees of the same employer, the Board noted in its decision, as it had often noted in earlier cases, that there was nothing in the War Department regulations or in the duties or obligations of the militarized guards which made it inappropriate for them to bargain collectively through such a union (*Jones*, R. 73, 53–54).

Petitions for enforcement of its orders, filed by the board in the courts below (*Jones*, R. 76–78; *Atkins*, R. 337–339), were denied. The Circuit Court of Appeals for the Sixth Circuit held, in the *Jones & Laughlin* case, that the militarized guards were employees within the meaning of the Act.[11] The court went further, however, and

[11] The court also upheld the Board's determination that the guards were not "supervisory" employees (*Jones*, R. 84–85). That question was not raised in the *Atkins* case.

despite the fact that no such objection had been urged before the Board, held that it would be against public policy in time of war to require an employer to bargain with a union as the representative of its militarized plant protection employees when that union also represents, though in a separate unit, other employees of the same employer (*Jones*, R. 83–89). In the *Atkins* case, the Circuit Court of Appeals for the Seventh Circuit refused to enforce the Board's order primarily on the ground that the militarized guards were not "employees" within the meaning of the Act (*Atkins*, R. 348–366).

The Board filed a petition for writs of certiorari to review these adverse decisions (Nos. 1237 and 1238, October Term, 1944). In its petition the Board noted, *inter alia*, as it had in its petition for rehearing in the *Jones & Laughlin* case in the court below (*Jones*, R. 93, n. 6), that, following the refusals to bargain, the guard forces involved had been demilitarized. (Petition for Writs of Certiorari, Nos. 1237 and 1238, October Term, 1944, p. 27). The Board urged that this fact should not be regarded as rendering moot either the Board's order or the question of the effect of militarization upon the employee status of the guards, since the guards were militarized at the time the refusals to bargain occurred, and

unless the employers were then bound to bargain with the representatives of the guards, there were no unfair labor practices and the Board's orders were invalid (*id.* at p. 28). The Board further suggested that the only effect of the demilitarization was to deprive the employers of the future use of militarization as a defense for refusing to bargain. This Court granted writs of certiorari, vacated the judgments below, and remanded the cases to the respective circuit courts of appeals "for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved and the effect thereof on the Board's orders." 325 U. S. 838.

Pursuant to the remand, the parties entered into stipulations respecting the dates and circumstances of the demilitarization of the guards at the plants of the respective respondents. Included also in the stipulations, though clearly beyond the terms of the remand and the issues open under it, were facts showing that the plant guards of respondent Jones & Laughlin Steel Corporation were, at all times relevant to these proceedings, commissioned as private policemen of the City of Cleveland, and exercised "the legal powers of peace officers in their work as plant guards" (*Jones*, R. 114–118); and that the plant guards of respondent E. C. Atkins and Company

had been "sworn in as Deputy Policemen by the City of Indianapolis." (*Atkins*, Stip. p. 11).[12]

The Board thereafter filed motions for decrees enforcing its orders in both cases, which were denied (*Jones*, R. 112–114, 119–122; *Atkins*, R. 320–322). In the *Atkins* case, the Circuit Court of Appeals for the Seventh Circuit held that "the facts relative to the changed status of the plant guards by reason of their demilitarization * * * are irrelevant to * * * our decision that the plant guards were not [at the time of the refusal to bargain] employees of respondent within the meaning of the Act" (*Atkins*, R. 321), and reaffirmed that holding. In the *Jones & Laughlin* case, the Circuit Court of Appeals for the Sixth Circuit held that not only the facts concerning demilitarization, but also the facts relating to the deputization of the guards which were embodied in the stipulation (*Jones*, R. 114–118), were to be considered as though they "had been presented at the hearing before the Board" (*Jones*, R. 120). The court held that the guards were "employees" within the meaning of the Act, but concluded that in view of the "drastic police powers" exercised by the guards, as shown by the stipulation, it was "improper for the Board to permit their

[12] The stipulations clearly reserved the right of all parties to contend that any of the facts contained therein are irrelevant to the issues in the proceedings (*Jones*, R. 114; *Atkins*, p. 12 of Stip.).

organization by the same union which represents the production employees" (*Jones*, R. 121).

SPECIFICATION OF ERRORS TO BE URGED

In the *Atkins* case, the Circuit Court of Appeals for the Seventh Circuit erred:

1. In holding that guards who are members of the civilian auxiliary to the military police are not employees within the meaning of the Act.

2. In holding that the Board's findings of fact concerning the economic relation between the guards and E. C. Atkins and Company are not supported by substantial evidence.

3. In holding that "since 1941, respondent has been engaged exclusively in the manufacture of armor-plate for the federal government."

4. In holding that "respondent was reimbursed by the government for all costs accrued in the manufacture of war material, including that of compensation paid to the guards."

5. In holding that "it makes no difference whether they [the militarized guards] were paid by respondent or by the government."

6. In holding that the authority to hire and discharge a militarized guard was solely the prerogative of the military, and that respondent's authority was limited to making recommendations for such action.

7. In holding that the War Department regulations leave "little room for the contention that

respondent had the right but failed to exercise control" over the militarized guards and that "all authority and control was taken over by the Army and none was exercised by respondent."

8. In holding that a producer of war materials for the United States Government, whose labor costs are reimbursed by the Government, cannot be found to be an employer within the meaning of the Act.

9. In failing to give any weight to the Board's determination based on its settled policy that, despite their militarization, plant guards are employees of respondent within the meaning of the Act and are entitled to exercise the collective bargaining rights guaranteed by the Act, and in substituting its own inferences and judgment for those of the Board with respect to the guards' employment status.

10. In setting aside and denying enforcement to the Board's order.

In the *Jones & Laughlin* case the Circuit Court of Appeals for the Sixth Circuit erred:

1. In considering facts concerning the private police status of the guards which were never presented to the Board.

2. In passing upon the question whether because of their militarization and deputization, the plant guards should be permitted to bargain through a labor organization also representing a separate unit of the employer's production and

maintenance employees, no such question having been raised before the Board.

3. In holding that it would not effectuate the policies of the Act and would be against the public interest, to permit an employer's plant protection employees, who constitute an appropriate bargaining unit, ~~and who~~ are members of the civilian auxiliary to the military police, and who are deputized as police officers by local authorities, to bargain collectively with the employer through a union which also represents a separate bargaining unit of other employees of the same employer.

4. In failing to give any weight to the Board's determination and settled administrative policy that the bargaining pattern described in the preceding paragraph effectuates the policies of the Act and in substituting its own judgment for that of the Board with respect to the propriety of such bargaining pattern.

5. In holding that, under Section 9 (b) of the Act, the Board is empowered to decide whether a union selected by a majority of employees is "appropriate."

6. In Holding that the Board failed to give adequate consideration to the public interest in view of the war.

7. In setting aside and denying enforcement to the Board's order."

REASONS FOR GRANTING THE WRITS

1. The decision of the Circuit Court of Appeals for the Seventh Circuit in the *Atkins* case, holding that militarized guards are not "employees" within the meaning of the Act (*Atkins*, R. 321, 364), conflicts with the holding of the Circuit Court of Appeals for the Sixth Circuit in the *Jones & Laughlin* case that such persons are "employees * * * entitled to the protection of the Act" (*Jones*, R. 84–85, 121).

The Board's findings in both cases with respect to the employment status of the militarized guards are in conformity with the regulations of the War Department (*supra*, pp. 8–13). The provisions of these regulations have been integrated into the Board's settled policy established in a large number of cases in which the Board has examined the employment status and determined the bargaining rights under the Act of plant guards who are members of the civilian auxiliary to the military police. Since the applicable War Department orders and regulations establish a common status for such guards wherever they are found (*supra*, p. 8), the Board has recognized the "militarized plant guard" as an employee-category which does not vary materially from case to case.[13] The Board's decisions in

[13] A collection of more than 135 of the Board's decisions upholding the collective bargaining rights of plant guards as "employees" within the meaning of the Act, despite their

earlier cases in this field, as well as its decisions and the supporting evidence in the instant cases (*supra*, pp. 5–15), demonstrate, moreover, that the actual relationship which exists between the employer and his militarized guards is essentially the same in every case.

In holding unsupported by substantial evidence the Board's findings that the guards were respondent's employees, the court in the *Atkins* case not only overturned a Board decision which was amply supported, but the War Department's own opinion.[14] The War Department regulations make it clear that, while militarization of plant guards superimposes upon their normal peacetime duties and responsibilities certain additional obligations, their basic status as employees of a

militarization, appears in Appendix C to the Board's prior petition for writs of certiorari in these cases, Nos. 1237 and 1238, October Term, 1944, pp. 38–41. See particularly *Matter of Chrysler Corporation*, 44 N. L. R. B. 881; *Matter of Budd Wheel Co.*, 52 N. L. R. B. 666; and *Matter of Dravo Corporation*, 52 N. L. R. B. 322. See also National Labor Relations Board: *Seventh Annual Report* (1943), p. 63; *Eighth Annual Report* (1944), p. 57.

[14] Furthermore militarized guards have been treated as private employees for purposes of the Fair Labor Standards Act (*Walling* v. *Lum*, 7 Wage-Hour Reporter 570 (S. D. Miss.)) and by the National War Labor Board (*In re Detroit Steel Products Co.*, 6 War Labor Rep. 495; *In re Brewster Aeronautical Corp.*, 11 War Labor Rep. 286; *In re Great American Industries*, 11 War Labor Rep. 287; *In re Youngstown Sheet & Tube Co.*, 15 War Labor Rep. 500). We are informed that under the Social Security Act as well, militarized guards are treated as employees.

private employer is not altered thereby. Plainly, when the War Department, which created the civilian auxiliary to the military police, provided expressly that the guard's compensation was to be determined between the guards and the management, that the guards were to remain subject to the usual social security, workmen's compensation and employer's liability provisions applicable to employees, and that they were to be "permitted to bargain collectively" (see *supra*, pp. 9–13), it manifested its understanding that they continued to be employees for purposes of labor relations and other labor legislation. This statement of the employees' rights by the agency which established their semi-military status in itself demonstrates that the Board's decision that the guards were employees for purposes of the National Labor Relations Act is not unreasonable. In making its own independent appraisal of the facts and coming to a contrary conclusion, the decision of the court below in the *Atkins* case would appear to be inconsistent with the rule governing the scope of judicial review in such matters, as prescribed by this Court in *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111.[9]

[9] Particularly striking in this respect is the action of the court in substituting for the Board's findings that "the guards are interviewed for employment by the respondent and not by the United States of America, and are hired by

The evidence shows that the guards' duties, functions, obligations, and relationship with the management were not different in the *Atkins* case from those existing in the "typical" plant guard cases (*supra*, pp. 7–12). The Seventh Circuit Court of Appeals apparently was of the view that the fact that the chief guard, a company employee who exercised control over the other guards in the performance of their day-to-day duties (*supra*, p. 12), regularly received orders from the military authorities rather than from company management (*Atkins*, R. 75, 78–82) offset the other considerations weighed by the Board. But as this Court held in the *Hearst* case, *supra*, 322 U. S. at 128, "control of 'physical conduct in the performance of the service' * * * the traditional test of the employee relationship' at common law," is not the predominant test under the Act.[16] "Employee" is

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the respondent; * * * their discharge is ordinarily initiated by respondent" (*Atkins*, R. 31; 53–54, 59, 68–72, 81–84, 91–92), and its inference that the authority exercised over these subjects by the military authorities was in the nature of a veto power (*Atkins*, R. 31), the court's own inference that "the authority to hire and discharge was solely the prerogative of the military" (*Atkins*, R. 357).

[16] In any event, under the War Department regulations (*supra*, pp. 9–13) the degree of control retained by the employer over the militarized guards who protect his plant satisfies the "control" test insofar as it is applicable here. The *Hearst* case, *supra*; *National Labor Relations Board* v. *Carroll*, 120 F. 2d 457, 458 (C. C. A. 1). See also *New Orleans-Belize S. S. Co.* v. *United States*, 230 U. S. 292; *Standard Oil*

to be construed "with reference to the purpose of the Act and the facts involved in the economic relationship" (*Hearst* case, *supra*, at 129).

The court below misconceived the facts involved in the economic relationship between the plant guards and respondent. It erroneously assumed that respondent produced goods solely for the Government and that, although respondent determined the rate of pay and paid the wages of the guards, it was reimbursed for this expense by the Government (*Atkins*, R. 350, 355; 36; 47, 277, 333). Reasoning from this erroneous premise the court concluded that respondent served as a mere conduit for payment of the guards by the Government (*Atkins*, R. 355). Even if it were true that respondent was reimbursed by the Government for the wages of the guards, this fact would not demonstrate any economic impropriety in collective bargaining between respondent and the guards. Since wages, the most important term of employment, were fixed entirely by private contract between respondent and the guards, respondent was in the same position as any private employer who, in

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Co. v. *Anderson*, 212 U. S. 215; *Carroll* v. *Social Security Board*, 128 F. 2d 876, 879 (C. C. A. 7); and *Restatement of the Law of Agency*, Ch. 7, Sec. 227 (b). That these regulations were applied to respondent's plant in full force is evident from the fact that the hours of work required of members of the guard force were determined by respondent, not by military authorities (*Atkins*, R. 78–79).

effect, determines wages unilaterally, and the guards were in the same position as the employees of any such employer, obviously standing in the same need of collective bargaining. The record shows, however (*Atkins*, R. 333), that the compensation of the guards was borne, not by the Government, but by respondent. Under these circumstances the premises upon which the Act rests (Section 1) are completely applicable to the relation between respondent and the guards; collective bargaining is essential to enable the guards to deal concerning their wages on a basis of equality with respondent.

2. In the *Jones & Laughlin* case the Sixth Circuit Court of Appeals, both in its initial decision, and in its opinion after the remand, failed to give effect to limitations imposed upon reviewing courts by Section 10 (e) of the Act. Holding inapplicable this Court's statement that the Act "expressly deprives the reviewing court of power to consider" facts not introduced before the Board (*National Labor Relations Board* v. *Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241, 249-250), the court below considered the facts relating to the status of the guards as private police officers as though these facts, which had never been presented to the Board, and which appeared only in the stipulation entered into by counsel following the remand, "had been presented at the hearing before the Board" (*Jones*, R. 120). This de-

parture from well-settled principle obviously cannot be justified under the terms of the remand which directed the court to consider only the "alleged changed circumstances with respect to demilitarization." The guards, as the stipulation shows (*Jones*, R. 114–115), occupied the same private police status throughout the period of militarization as they did after demilitarization; that status, therefore, could not be considered as "changed circumstance" attributable to demilitarization. Moreover, the remand, fairly read, appears to authorize inquiry into the "alleged changed circumstances" only for the purpose of determining whether the Board's order was rendered moot, or, in the alternative, whether an alleged obstacle to enforcement of the Board's order had been removed. We submit that it cannot be read as authorizing decision on the merits of the Board's order on the basis of facts never brought to the attention of the Board.

In more than forty cases the Board has dealt with the question of the collective bargaining rights of plant guards who are deputized by local police authorities.[17] It was clearly improper for

[17] A survey by the Board which has not yet been completed shows that at the present time unions certified by the Board have contracts covering deputized plant guards at 22 different plants. In two other cases, the issue of the bargaining rights of deputized plant guards is pending in the circuit court of appeals. *Wilson & Co.* v. *National Labor Relations Board*, now pending in the Eighth Circuit, and *Armour & Co.* v. *National Labor Relations Board*, now pending in the Tenth Circuit.

the court below to decide this important question in a case where the issues concerning deputization were never presented to nor considered by the Board.

In both its initial decision and its decision on remand, the Sixth Circuit Court of Appeals also ignored the prohibition of Section 10 (e) that "no objection that has not been urged before the Board * * * shall be considered by the court." Throughout the proceeding before the Board, respondent's sole contention was that plant guards normally, and particularly when militarized, were a part of management and therefore not employees within the meaning of the Act (*Jones*, R. 6–8, 38–40, 56, 57, 68–70). At no time did respondent urge that if the plant guards were held to be employees, they should nevertheless be denied the right to bargain collectively through a union which also represents the employer's production and maintenance employees; yet the court below, of its own motion, declined to enforce the Board's order on this stated ground (*Jones*, R. 87–89, 119–122).[18] This action of the court below

[18] Respondent's failure in the instant proceeding to object to the Board's order on this ground is to be contrasted with its position in a case involving the plant guards at its Pittsburgh Works, in which respondent "moved to dismiss the Petition because the Petitioner is the same labor organization that represents production and maintenance employees in all of its steel plants" (*Jones*, R. 59–60). In the instant case, respondent referred to the pendency of the proceeding involving the Pittsburgh Works for the sole purpose of ex-

appears to be inconsistent with the applicable decisions of this Court. *National Labor Relations Board* v. *Cheney California Lumber Co.*, 326 U. S. 706; *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253. The important question respecting the power of the Board, under Section 9 (b), to restrict the freedom of choice of representatives of employees in an appropriate unit should not have been decided in a case where, because the issue was not raised, the Board neither considered the question nor explicated its view of the powers conferred upon

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plaining and buttressing the allegation in its Answer to the Board's Complaint that respondent's "refusal to bargain is qualified and conditional and not final and conclusive as alleged" (*Jones*, R. 38–40). Respondent took the position that it would finally decide whether or not to bargain with the Union only after the Pittsburgh case was concluded (*Jones*, R. 47, 48–50, 55–60). At no time did respondent seek to incorporate by reference in this case the objections which it had raised in the Pittsburgh case, nor did it in any other manner urge the Board to disqualify the Union from representing the guards on the ground that the Union already represented the production and maintenance employees. Since the issue was not raised, the Board's decision in the unfair labor practice case makes no mention of the point, and the only reference to it in the representation case decision (*Jones*, R. 52–55) does not discuss the power of the Board to limit the range of choice of bargaining representatives open to employees in an appropriate unit, or the considerations of public importance which support the Board's general policy of refusing to restrict plant guards' choice of representatives to unions other than those already representing other units of employees of the particular employer. Cf. *Matter of Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973, 976–977.

it by the Act. Nor was it proper for the court below, having held that the plant guards were employees of respondent, to impose a limitation upon their choice of representatives for which respondent, perhaps calculatingly, in view of the invitation to friction between competing unions inherent therein, did not contend.

3. In deciding these important questions adversely to the Board, the Sixth Circuit Court of Appeals not only disregarded the controlling effect of Section 10 (c) of the Act with respect to the limitation of issues; it also exceeded the proper bounds of its reviewing authority by substituting for the judgment of the Board its own judgment that the bargaining pattern established by the Board's order would be detrimental to the public interest in war time. Because, in the court's view, such a bargaining pattern "might" result in a conflict between their loyalty to other employees who are members of the same union and their loyalty to their employer or the Federal Government—a conflict which would be inimical to the public welfare—the court held that the Board was under a duty to deny to the guards the right to select as their bargaining representative a union which already represented rank and file employees (*Jones*, R. 88).

In sanctioning the bargaining pattern in this case, following its established administrative practice, the Board, far from ignoring the public in-

terest as the court below charged (*Jones*, R. 88), expressly acted in furtherance of that interest. The Board's practice accords completely with the expressed policy of the military authorities (*supra*, pp. 12–13), who are charged with ultimate responsibility for the proper functioning of the militarized guards as a wartime protective force. It represents, moreover, an entirely satisfactory accommodation of the purpose and provisions of the Act to the requirements of wartime production.

The Board has held that it is not empowered to vitiate the Congressional policy, declared in Section 1 of the Act, of "protecting the exercise by workers of *full* freedom of association, self-organization, and designation of representatives *of their own choosing*" (italics supplied), by refusing to certify any representative freely chosen by employees in an appropriate unit. *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B., 368; *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874, 877. This view comports with the interpretation of this Court that the Act confers upon employees complete freedom in the selection of representatives. In *Hill* v. *Florida*, 325 U. S. 538, 541, this Court declared:

> Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. "Full free-

dom" to choose an agent means freedom to pass upon that agent's qualifications.

Clearly then, "the function assigned to the Board is not the choice of the labor organization to represent the bargaining unit, for that is to be the free choice of the majority of the employees in some defined group of employees which the Board finds to constitute the appropriate unit."[19] In holding that the Board is authorized to decide whether a union selected by a majority of employees is "appropriate" (*Jones*, R. 115), the Sixth Circuit reached a result inconsistent with the principle thus announced by this Court in *Hill* v. *Florida, supra.*

The Board has observed no justification for departure from this principle as applied to militarized or deputized plant guards. It has noted in that connection that there is "no necessary conflict between self-organization for collective bargaining and the faithful performance of duty" (the *Chrysler* case, *supra*, 44 N. L. R. B. at 885–886). [Italics added.] As with other employees, the Board has refused to indulge the "implication that membership in a union tends to undermine the honesty of plant-protection employees or their competence to execute their duties satisfactorily" (the *Dravo* case, *supra*, 52 N. L. R. B.

[19] Opinion of the late Mr. Chief Justice Stone, dissenting on other grounds, in *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 171–172.

at 327). Unsupported assertions concerning what the public interest requires have been ineffective, in this, as in other classes of cases, to induce the Board to withdraw the protection of the Act from a large segment of the Nation's working population. The *Chrysler*, *Dravo*, and *Budd Wheel* cases, *supra*.

At the same time, the Board has given the fullest consideration to the exigencies of the war emergency and to the effect of the guards' militarization upon their relationship to their employer and to the Government. It has noted that the "militarization of plant-protection employees, while no obstacle to unionization, is nevertheless significant" (the *Dravo* case, *supra*, 52 N. L. R. B. at 328). To accommodate the bargaining process to the situation presented by the militarization of plant guards the Board has, as a matter of policy, segregated such guards into bargaining units separate and distinct from bargaining units of other employees of the same employer[20] "to the end that the guards may be better able to function within the military sphere, and to permit the military authorities to exercise greater control over the guards" (the *Dravo* case, 52 N. L. R. B. at 328). The Board believes that its unit policy with respect to militarized guards satisfies the

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[20] See in particular the *Chrysler* case, 44 N. L. R. B. at 886–887; the *Dravo* case, 52 N. L. R. B. at 328; the *Budd Wheel* case, 52 N. L. R. B. at 670–672.

security requirements of wartime, and that neither the policies of the Act nor the public interest generally require any further restriction upon militarized guards in the exercise of the bargaining rights protected by the Act.[21] As the Board declared in the *Budd Wheel* case, *supra*, 52 N. L. R. B. at 670, "An efficient prosecution of the war effort demands the preservation of the right to collective bargaining, not its destruction."[22] And, as we have shown, the mili-

[21] The "remedy for inefficiency or wilful disregard or neglect of duty on the part of the plant-protection employees lies implicitly in the power of the Company to discipline or discharge them and in the power of the military authority to take all necessary steps to protect the public interest." The *Chrysler* case, 44 N. L. R. B. at 866. Cf. *Associated Press v. National Labor Relations Board*, 301 U. S. 103, 131–132.

Furthermore union contracts on behalf of militarized guards invariably contain a provision subjecting the contract to the War Department regulations affecting militarized guards and provide that the contract shall in no way interfere with the guards' performance of their duties as auxiliary military police. Such a contract is in evidence in the *Atkins* case (*Atkins*, R. 297–304). Excerpts from such contracts appear at *Jones*, R. 101–106.

[22] Cf. *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67, 81 (C. C. A. 3), in which the court stated:

"The second consideration, namely, the serious nature of the production of everything that pertains to war industry is of obvious importance. But the argument of lawyers in a courtroom that the disestablishment of a present bargaining unit and the abrogation of a present contract will disturb that production or will not disturb it is necessarily pure speculation. The Board is charged with the responsibility of representing the public interest, not that of private liti-

tary authorities in charge of such guards, who are in a better position than the courts to pass judgment on the national interest in such matters, have approved the Board's view.[23]

Moreover, the court's decision directs the Board in future similar cases[24] to perform, in the name of the public welfare, a supervisory function over the choice of representatives of bar-

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gants. This the courts have said over and over again. Neither we nor counsel may assume that the Board is not conscious of all the factors to be taken into consideration in the present emergency nor have we any reason to assume lack of competence on their part to arrange such adjustment as is necessary to preserve the public interest. The problem is peculiarly one for expert administration and that the statute has lodged in the Board, not the courts."

[23] Experience, moreover, has demonstrated the reasonableness of the Board's policy. The Board has certified bargaining representatives for units of militarized guards in more than 105 cases. In more than 80 of these cases the certified union also represented a separate bargaining unit of other employees of the same employer. In a large number of these cases the employer recognized the certified union and entered into contractual relations with it. Despite this extensive application of the policy followed in the instant case, the Board has received no indication from any source that the dangers to the public interest and particularly to the war effort allegedly inherent in that policy have in fact materialized in any case.

[24] The Board has decided and continues to be presented with large numbers of cases involving the bargaining rights of plant guards who are deputized or commissioned as public police officers. *E. g., Matter of Bethlehem-Fairfield Shipyard, Inc.*, 61 N. L. R. B. 901, 905–906; *Matter of Standard Steel Spring Co.*, 62 N. L. R. B. 660, 662; *Matter of Frick Co.*, 63 N. L. R. B. 837, 840; *Matter of Rockbestos Products Co.*, 47 N. L. R. B. 1312, 1313–1314.

gaining units of plant guards, a function the Board believes the Act prohibits it from performing. The court below in its recent decision in *National Labor Relations Board* v. *Packard Motor Car Co.*, decided August 12, 1946, indicated that it would apply the same principle to the selection of representatives by units of supervisory employees. As long as the decision below stands, therefore, it constitutes a major obstacle to administration of the Act in accordance with the Board's views of the powers conferred upon it, and unsettles many cases involving both plant guards and foremen decided by the Board on the contrary theory. See, *e. g.*, *Matter of Jones and Laughlin Steel Corp.*, 66 N. L. R. B. 368; *Matter of Curtiss Bay Towing Co.*, 66 N. L. R. B. 1152; *Matter of Texas Co.*, 67 N. L. R. B., No. 59; *Matter of Williams Oil-O-Matic Division of Eureka-Williams Corp.*, 67 N. L. R. B., No. 140; *Matter of Virginia Electric & Power Corp.*, 68 N. L. R. B., No. 72.

4. The questions raised by these cases are important for, if the decisions below stand, they overturn a Board policy which for a period of years has effected stable conditions in a large and difficult area of labor relations. These decisions reach further than the bargaining relationship between the employers and guards involved in the instant cases. In over 135 cases, the Board has upheld the right of militarized plant guards to bargain collectively under the Act (see *supra*,

note 13, pp. 21-22). If the Seventh Circuit's opinion in the *Atkins* case stands, the Board may well be required to undertake new proceedings to establish bargaining rights once again for the now demilitarized plant guards. As we have shown (*supra*, p. 22) militarized guards such as those involved in this case, have been considered to be employees of private employers within the meaning of the Fair Labor Standards Act, the Social Security Act, and by the National War Labor Board. The decision below appears to cast doubt upon the validity of that view, and thereby unsettles an important area in which private rights have accrued.

Similarly, in more than 40 cases, the Board has upheld the right of deputized plant guards to bargain under the Act through unions which also represent the employer's rank and file employees.[25] Indeed, that bargaining pattern is present in almost 90 percent of the cases involving plant guards generally and deputized guards in particular. If the Sixth Circuit's opinion in the *Jones & Laughlin* case stands, the entire bargaining pattern which has developed in this field will be destroyed. The court's opinion invites employers in the Sixth Circuit who have entered into bargaining relations with plant guards in accordance

[25] We are informed that the National Mediation Board has also decided between 20 and 30 cases involving the same question and that its power to certify as representatives of units of deputized guards labor organizations representing other railroad employees has never been challenged.

with the Board's present position to disrupt those relations.

Cases involving units of deputized plant guards are coming before the Board in increasing numbers. It is important to the proper administration of the Act that the Board not be embarrassed in applying its established policy in this field by an opinion of a circuit court of appeals upon which employers generally may rely, and which is likely to thwart amicable settlement of cases involving the bargaining rights of deputized guards without formal Board proceedings, at least in the Sixth Circuit. It is also important for all concerned to know whether, in the exercise of the Board's judgment and administrative discretion as to ways and means of effectuating the policies of the Act in wartime, its determinations are to be accepted by the courts when not unreasonable, or whether, as the courts below appear to hold, its decisions on these matters are to be subject to *de novo* judicial review.

CONCLUSION

It is respectfully submitted that this petition for writs of certiorari should be granted.

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GERHARD P. VAN ARKEL,
General Counsel,
National Labor Relations Board.

AUGUST 1946.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372; 29 U. S. C., Secs. 151, *et seq.*) are as follows:

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of com-

merce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * * *

DEFINITIONS

SEC. 2. When used in this Act—

* * * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to

the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

* * * * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-

organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

* * * * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the

district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

APPENDIX B

War Department Regulations providing for the organization of a civilian auxiliary to the military police units:

WAR DEPARTMENT

HEADQUARTERS, ARMY SERVICE FORCES
WASHINGTON

CIRCULAR No. 15 MARCH 17, 1943.

AUXILIARY MILITARY POLICE.

Circular No. 52, Headquarters, Services of Supply, August 28, 1942, subject, "The Military Organization of Plant Guard Forces," is rescinded, and the following substituted therefor:

1. *Purpose of military organization.*—*a.* Executive Order No. 8972, December 12, 1941, authorizes the Secretary of War (and the Secretary of the Navy) "to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury and destruction certain strategic premises, materials, and utilities." Accordingly, the Secretary of War directed the military organization of plant guard forces as Auxiliary Military Police (see attached letter, The Adjutant General's Office, AG 231.43 (7-2-42) MS-SPAAM-M, July 2, 1942, subject, "Military Organization of Plant Guard Forces.") The purpose is to increase the authority, efficiency, and responsibility of guard forces at plants important to the

prosecution of the war, and through military training to provide auxiliary forces throughout the United States to supplement the Army in wartime emergency situations.

b. Nothing in this circular will be construed as modifying the responsibility of plant managements "for providing adequate protection at all times against all hazards," (par. 4, Memorandum No. S380–4–43, Office of The Adjutant General, Feb. 18, 1943, subject, "Responsibilities for Internal Security.") The plant guard officer (see par. 4*d*) may, however, take appropriate action through the plant management to correct any condition deemed by him to result in or threaten defective or inadequate performance by the guard forces of its ordinary protective duties.

c. The term "plants" as used in this circular, includes civilian plants and installations important to the prosecution of the war; War Department plants, posts, camps, and stations; civilian or municipal plants and facilities essential to power, communication, and transportation; other facilities and installations deemed important to the prosecution of the war.

d. The phrase "plants assigned for protective survey and inspection" used in paragraph 1, attached letter, refers to plants and facilities on the Master or Service Command Responsibility List. Before the guard forces at any civilian or municipal plant are militarized, the plant must appear on the Master or Service Command Responsibility List.

2. *Mission of the Auxiliary Military Police.*—*a.* The mission of a guard force of Auxiliary Military Police is—

(1) To provide internal and external protection of the plant against sabotage, espionage, and natural hazards.

(2) To serve with the Army in providing protection to the plant and its environs in emergency situations.

b. An emergency situation in which the Auxiliary Military Police may be called upon for military service may arise from flood, conflagration, or other disaster; internal disorders hazardous to property or production important to the prosecution of the war; enemy action by air raid; fifth column activity; paratroop attack or invasion; or it may arise from any other condition or circumstance involving the plant or its community making it necessary to place in operation one or more of the emergency plans of the War Department or of the service command.

c. A guard force or any member thereof, whether on or off duty, may be assigned to duty in an emergency at places other than the premises of the plant normally served, provided only that in the opinion of the plant guard officer or other representative of the Army in command such assignment will contribute to the protection of the guard force's own plant and its environs or to the protection of its production.

3. *Persons eligible for membership in Auxiliary Military Police.—a.* The plant guard officer will determine in each case which groups of employees, in addition to the regular plant guard force, may become members of the Auxiliary Military Police. Persons such as firemen, watchmen, and women guards may be included provided they are able physically to perform the mission and duties of the Auxiliary Military

Police described herein and in the agreement signed by the Guards. Women guards may be armed; but in view of the congressional policy that women's auxiliary forces be limited to noncombatant duty, it is directed that in formulating plans for any emergency situation requiring the use of force against the enemy, such plans will provide for the assignment of any women members of the Auxiliary Military Police to noncombatant activities.

b. No minimum number of guards is required for the militarization of any guard force. Guard forces, no matter how small, will be militarized if the plants which they guard are so located that the guards can be organized, trained, and commanded efficiently by available Army personnel, and if, in the opinion of the plant guard officer, the results obtainable are commensurate with the effort involved.

c. Employment of an alien as a plant guard must be approved by the Secretary of War in the same manner as employment of an alien having access to work on classified or aeronautical contracts.

4. *Responsibility for military organization, training, and command of the Auxiliary Military Police.—a. The Provost Marshal General.*—The Provost Marshal General is charged with the general supervision of activities relating to the Auxiliary Military Police as a part of the internal security program. Requests for legal opinions relating to the Auxiliary Military Police will be made through military channels to the Provost Marshal General.

b. Commanding generals of service commands.

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(1) The commanding generals of service commands are responsible for the military organization, training, and command of the guard forces at all plants and installations within their respective service commands except plants and installations which are under the continuing protection responsibility of the Navy, ports of embarkation, and plants and installations which in the opinion of the Provost Marshal General should be exempt from such organization.

(2) At ports of embarkation, the local commanding officer is responsible for the military organization, training, and command of the guard forces. The commanding general of the service command will be advised, if he so requests, of the number, location, equipment, and state of training of such guard forces, and he may make recommendations in connection therewith. The commanding general of the service command may inspect these guard forces at times convenient to the local commanding officer.

c. Commanding officer having jurisdiction over the guard forces. (See par. 3, attached letter.)

(1) *Plants and installations having no local resident commanding officer.*—The commanding general of the service command will designate an officer to be the commanding officer having jurisdiction over the guard forces of plants and installations at which there is no local resident commanding officer. This officer will be the commanding officer of the district of the service command in which the plant or installation is located, unless the commanding general of the service command directs otherwise.

(2) *Plants and installations with a local resident commanding officer.*—The com-

manding officer having jurisdiction over the guard forces of plants and installations (including ports of embarkation) at which there is a resident local commanding officer will be such commanding officer.

(3) In all matters pertaining to military organization, training, and command of the Auxiliary Military Police, the commanding officer having jurisdiction over the guard forces (except such officer at ports of embarkation) will report to the commanding general of the service command.

d. Plant guard officers.

(1) For each plant or group of plants at which there is no local resident commanding officer, the commanding generals of service commands will appoint or cause to be appointed a commissioned officer called the "plant guard officer" to have command (see par. 6*a* (1)) of the guard force.

(2) At each plant where there is a local resident commanding officer, this officer will either serve as plant guard officer himself; appoint an officer from his command so to serve; or request the commanding general of the service command to appoint or cause to be appointed a plant guard officer.

(3) The plant guard officer is the member of the Army of the United States in command (see par. 3*c*, attached letter) of the guard force, and will report direct to the commanding officer having jurisdiction over the guard force (see *c*, above) on all matters pertaining to the military organization, training, and command of the Auxiliary Military Police. Noncommissioned officers from the Army of the United States will be assigned when available to the plant guard officers for the purpose of assisting in military drill and instruction.

c. Termination or change of continuing protection responsibility.

(1) If a plant at which the guard force has been organized as Auxiliary Military Police is removed from the Master or Service Command Responsibility List, the commanding general of the service command will determine whether such guard force will be continued as Auxiliary Military Police, and trained and commanded as before, or whether its status as such will be terminated. In the latter event, each member in good standing of such force will be issued a Certificate of Meritorious Conduct (see par. 6*c*).

(2) Should the responsibility for the continuing protection of any plant at which the guard force has been organized as Auxiliary Military Police be transferred from the Army to the Navy, each member in good standing of the force will be issued a Certificate of Meritorious Conduct prior to the actual assumption by the Navy of the responsibility for continuing protection.

5. *Activation of organization of Auxiliary Military Police.—a. Articles of War explained.*

(1) Guard forces which have not been organized as required (see par. 1, attached letter) will be assembled at the earliest practicable date by the plant management at the request of the plant guard officer. At this assembly the Articles of War as prescribed by Article of War 110 will be read and explained to each member of the guard force (par. 3*a*, attached letter) by the plant guard officer or in his absence or unavailability by some other competent person who is an officer of the Army or

civilian officer of the Auxiliary Military Police. As certain of the Articles of War are generally inapplicable to Auxiliary Military Police, the foregoing directive will be considered complied with if Articles 2, 58, 59, 61–64, 66, 68–74, 76, 81–83, 85, 88–90, 92–94, 96, 104, and 105 are read and explained. These Articles define certain offenses punishable by court martial of which persons subject to military law may be guilty.

(2) The Auxiliary Military Police, immediately after the Articles of War have been read and explained, will be impressed with the fact that the Government of the United States is directly interested in the security and protection of the plant and its production as essential to the successful prosecution of the war. To this end the plant guard officer will issue and post a guard order reading, with appropriate variation to meet local conditions, substantially as follows:

Guard Order No. ____

To the Auxiliary Military Police at_____

1. On (date) the guard forces at this plant were activated by the War Department as Auxiliary Military Police, and for military purposes will be commanded, drilled, and instructed as military units.

2. All members of the guard force are subject to the Articles of War and may be court martialed or otherwise punished for violations thereof.

3. Effective on this date _____, a commissioned officer of the Army of the United States has been placed in command. Although in command at all times, this officer has not superseded the civilian guard officers and normally will exercise direct control only in matters relating to military

instruction and duties as Auxiliary Military Police.

4. The mission of this guard force is to provide protection for this plant. In addition to its normal functions the force or any member thereof whether on or off duty is available for military use in any emergency, whether it be the result of flood; conflagration, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. *No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission.*

5. The Government of the United States regards the protection of this plant and its production as essential in the successful prosecution of the war. The Auxiliary Military Police are ordered to provide this necessary protection and to ward off danger or threat of danger of any kind and from any source. If force must be used to accomplish this result, it will be used only to the extent reasonably necessary.

6. No member of the Auxiliary Military Police may resign without the written approval of the plant guard officer. In attention to duty, failure to attend required drill, and conduct unbecoming to the service may be cause of dismissal and the denial of a Certificate of Meritorious Conduct.

For the Commanding Officer, _____ District:

_____
(Date)

_____
(Plant guard officer)

The foregoing guard order will be issued in accordance with the provisions of *c* below.

b. Pledge and agreement.

(1) At the time of reading the Articles of War, each member of the guard force will

give the pledge of loyalty to the United States and execute the agreements prescribed form of which is shown in the inclosure to the attached letter. A separate pledge or oath is not required. If a guard refuses to sign the agreement, he may (but need not) be temporarily retained with the understanding that he will be dismissed as soon as replaced, and in any event within a reasonable time. The signed agreement will be retained by the plant guard officer. The guard force will be considered as a civilian auxiliary to the Military Police when 75 percent of the guards at a given plant have signed the agreement. (See par. 3, attached letter.) A certificate of membership in the Auxiliary Military Police will be issued each member. Forms will be supplied to the commanding generals of service commands by the Provost Marshal General.

(2) Each plant guard who becomes a member of the Auxiliary Military Police continues as such until he is released from his obligations. This will take place when competent military authority has approved of his dismissal or resignation (see par. 6*b*) or when he has been discharged without honor (see par. 6*c*).

c. Auxiliary Military Police orders and regulations.

(1) Orders and regulations for the Auxiliary Military Police from the military authority will be issued in the name of the commanding officer having jurisdiction over the guard forces. (See par. 4*c*.)

(2) At civilian-operated plants, such orders will be issued only after consultation with and, if possible, concurrence by the plant management.

6. *Status of Auxiliary Military Police.—a. Control.*

(1) The Auxiliary Military Police will continue to function as formerly, except that a member of the Army of the United States will be in command at all times, and except that they will be trained and instructed with a view to supplementing the Army in affording protection in emergency situations (see par. 2*b*). Control, therefore, will be exercised as heretofore through the plant management except at drill and except in emergency situations. Although the plant guard officers will be in command at all times, *they will not supplant the civilian guard officers,* and unless expediency demands otherwise will exercise their authority through the chain of command established by the plant management.

(2) The Auxiliary Military Police are supplementing the Army of the United States in a vital task of protecting war material and war production facilities. Attempts to intimidate them or to reduce or nullify their efficiency, or interfere with the performance of their mission, may constitute a violation of Federal as well as state criminal laws. When such incidents are suspected, an inquiry will be made and a detailed report will be sent immediately through channels to the office of the Provost Marshal General as a basis for requesting an investigation or prosecution.

b. Employer-employee relationship.

(1). Basically, the militarization of plant guard forces does not change the existing systems of hiring, compensation, and dismissal; all remain primarily a matter between the guards and the plant man-

agements. Guards in the employ of a private employer may, as heretofore, be dismissed by that employer, and those who are Civil Service employees in the employ of the War Department may be dismissed by the local commanding officer in accordance with Civil Service regulations. In neither case is a court martial necessary.

(2) A member of the Auxiliary Military Police may not be employed or dismissed and may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant's guard force would be impaired and declines to give his approval thereto.

c. Certificate of Meritorious Conduct.—A Certificate of Meritorious Conduct will be issued to each member of the Auxiliary Military Police whose service is terminated honorably. Forms will be supplied to the commanding generals of service commands by the Provost Marshal General. In the event of termination of service under conditions other than honorable, no such certificate will be issued. The commanding general of the service command may authorize a communication to each member of the Auxiliary Military Police whose service is terminated under conditions other than honorable, which will state only the fact of termination, the date, and that the communication is not a Certificate of Meritorious Conduct.

d. Discharge without honor.—If a member of the Auxiliary Military Police permanently quits his employment without approval of the plant guard officer or other duly authorized officer, a notice substantially as follows may be transmitted to him and a copy posted on the plant bulletin board:

SUBJECT: Discharge without honor.
To:

This is to notify you that you are discharged without honor as a member of the Auxiliary Military Police. A copy of this discharge and full statement of facts concerning your absence from duty without leave are being furnished the Provost Marshal General and the Selective Service System, Washington, D. C., for such further action as may be deemed appropriate.

By command of (Commanding General, _____ service command)

Discharge without honor will be regarded as exceptional procedure applicable to exceptional cases when the guard in fact is no longer in the employ of the company and is not available for dismissal, suspension, or reprimand. It should be used only after careful investigation of the facts, which may include a hearing if deemed advisable.

c. Appeal from dismissal.—A member of the Auxiliary Military Police employed by a civilian employer, discharged without honor or dismissed by or at the request of the plant guard officer or other authorized War Department representative (except by court martial proceedings), may, within 30 days of such discharge or dismissal, appeal through channels to the next superior Army authority in writing to reconsider such action. Such appeal will include a brief signed statement of the reasons for regarding the action unjust. If a member of the Auxiliary Military Police is discharged without honor or dismissed for an offense constituting a violation of the Articles of War, he may ask for a trial by court martial.

f. Employee benefits.—The status of the employer in respect to the employee benefits for the guard force is not changed. For example, social security, workmen's compensation, and employer's liability provisions remain unaffected. Employers should have a clear understanding with their insurance companies concerned.

g. Contractual relations.—It is not anticipated that the organization of plant guards as Auxiliary Military Police necessitates changes in existing contracts with the Government, but in any exceptional case where such alterations are essential to carry out the organization, arrangements to effect the necessary changes will be initiated by the plant guard officer with the least delay possible.

h. Labor relationships.

(1) If any proposed labor agreement is being considered which involves plant protection employees who are or may become members of the Auxiliary Military Police, the contracting parties will be urged to insert in such agreement a provision substantially as follows:

"It is understood that for the duration of the war this agreement is in all respects subject to the provisions of the directives of the War Department concerning military organization of the plant guard forces (letter, The Adjutant General's Office, AG 231.43 (7-2-42) MS-SPAAM-M, July 2, 1942, subject, "Military Organization of Plant Guard Forces"; and Circular No. 15, Headquarters, Army Service Forces, March 17, 1943, subject, "Auxiliary Military Police," and any amendments thereto), and that nothing contained in this agreement will be construed in any way to

interfere with the organization, efficiency, training, and control by the War Department of the company guard force as an Auxiliary to the Military Police, nor to abrogate or interfere with the duties, responsibilities, and rights imposed by the War Department upon any employee in such Auxiliary Military Police."

(2) Auxiliary Military Police are permitted to bargain collectively, but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police. In view of recent decisions by the National Labor Relations Board (see In re Lord Mfg. Co. & United Rubber Workers of America, CIO, Case No. R–4826, February 1943), the Auxiliary Military Police should be represented in collective bargaining with the management by a bargaining unit other than that composed of the production and maintenance workers, although both bargaining units may be affiliated with the same labor organization. Where the guards are not now included in the same bargaining unit, this is mandatory; where the guards are included in such unit, serious consideration will be given to effect a change to conform to the foregoing policies.

7. *Qualifications and equipment of Auxiliary Military Police.—a. Physical fitness.*—A member of the Auxiliary Military Police must be physically fit to perform his duties properly and in an efficient manner. It is sufficient if his physical fitness satisfies the plant guard officer.

b. Uniform.—Each member will be properly uniformed by the plant. A complete uniform consisting of blouse or shirt,

trousers, and hat is not required although the complete uniform is preferred. The plant guard officer will determine, with due regard to all circumstances, whether his guard force is "properly uniformed."

c. Distinctive insignia.

(1) Because the mission of the Auxiliary Military Police includes service with the Army (see par. 2*b*), the laws of war require that members wear distinctive insignia or marks capable of recognition at a distance. By wearing such insignia or marks members serving with the Army will be recognized as legitimate troops and not deemed irregulars or guerillas. Accordingly, members of the Auxiliary Military Police will wear either—

(*a*) An arm band (brassard), white, with the words "Auxiliary Military Police" in blue, such as has been distributed to commanding generals of service commands for issuance; or

(*b*) A badge or patch which may be worn on the right or left sleeve, at the shoulder or cuff level, or on the right or left breast pocket, either of a design substantially similar to the drawing attached to the letter, Office of the Provost Marshal General, SPMGS 231.4, November 28, 1942, subject, "Distinctive Insignia for Auxiliary Military Police," or of any other design, capable of recognition at a distance, bearing the words "Auxiliary Military Police," and approved by the commanding general of the service command.

Commanding generals of service commands will determine the device that will be worn by a given guard force and the manner and time of wearing it. Badges or patches must be procured by the plants

adopting them, at their own expense, and may be manufactured of any noncritical material. Commanding generals of service commands may also authorize plants to procure at their own expense arm bands, similar in appearance to those already issued, of any color combination capable of recognition at a distance and manufactured of any noncritical material.

(2) Each member of the Auxiliary Military Police is authorized to wear a service stripe for each six months of service faithfully performed. Service stripes will be in accordance with Army Regulations (see par. 27*c*, AR 600–35, Nov. 10, 1941, "Personnel—Prescribed Service Uniform"; par. 46*c*, AR 600–40, Aug. 28, 1941, "Personnel—Wearing of the Service Uniform"), except that they will conform in material and color to the chevrons furnished by the plant management to noncommissioned officers of the guard force.

(3) Commanding generals of service commands may authorize a guidon for an Auxiliary Military Police force which has shown itself outstanding in training, appearance, and efficiency.

d. Identification cards.—Each member of the Auxiliary Military Police must carry at all times an identification card bearing his photograph, fingerprints, signature, and description properly authenticated by the plant guard officer. As no special form of card is required, existing cards which can be made to satisfy all of these requirements may be utilized. The description of the guard need not be in detail, and will be sufficient if it contains easily recognizable characteristics such as color of hair and eyes, height, weight, and age.

e. Arms.

(1) The Auxiliary Military Police must be armed with appropriate weapons furnished by the plant management if such arming is recommended by the plant guard officer. Any sidearm, rifle, or shotgun may be an appropriate weapon depending on the circumstances. Training in the use of firearms and providing ammunition therefor are functions of the plant management. If the plant guard officer determines that the Auxiliary Military Police are not sufficiently trained in the use of firearms or are not adequately qualified in marksmanship, he may require the plant management to give further training and when he deems it desirable may accomplish such training himself.

(2) The Auxiliary Military Police, as agents of the Federal Government, will not be subject to any state or municipal requirement which conflicts with their wartime duties. A member of the Auxiliary Military Police required to be armed in performance of his duties will not be compelled to obtain a license, permit, or bond to possess small firearms in order to comply with local statutes or ordinances. State authorities have concurred when this question has been presented. The full cooperation of state and local authorities will be obtained and local requirements met unless a satisfactory understanding is reached.

f. Deputizing.—In general, there will be no considerable additional advantage in deputizing members of the Auxiliary Military Police as sheriffs or marshals. However, there will be individual cases in which it will be advisable to continue the local or state official capacity. The authority of the plant guard includes power to arrest with-

out a warrant for violation of the Sabotage Act (50, U. S. C., 101–106) or the Espionage Act (50, U. S. C., 21 and 32).

g. Training.

(1) The plant management continues to be charged with the training of its guard forces in their ordinary protective duties. In addition, the guard force must be qualified to perform its mission as set forth in paragraph 2*a*. This includes the ability to serve efficiently with the Army in any emergency situation that may arise (see par. 2*b*. To this end, the Auxiliary Military Police will be trained by or under the direction of the plant guard officer in military subjects to the extent he deems necessary. The use of experienced personnel from within the guard force for the purpose of conducting such training will be encouraged by the plant guard officer. The time to be devoted to such training will be determined by the plant guard officer. It will not exceed one hour per week or its equivalent except with the approval of the plant management.

(2) The military training will consist of such of the subjects listed in (3) and (4) below as the plant guard officer finds appropriate for each guard force, giving due consideration in each instance to the character, experience, previous training, and qualifications of the force as well as the locality and geography of the plant, its importance in the prosecution of the War, and all other pertinent considerations.

(3) Basic military subjects in which training may be given include—

(*a*) Military courtesy and discipline; Articles of War.

(*b*) Defense against air and parachute attack.

(*c*) Interior and special guard duty (military only).

(*d*) Personal encounters.

(*e*) Inspections.

(*f*) Use of weapons—hand grenades, pistol, police riot club, shotgun, tommy gun (where applicable).

(*g*) Military police—organization, duties, powers of arrest, use of force, etc.

(4) Advanced subjects in which training may be given include—

(*a*) Riot formations.

(*b*) Approach marches.

(*c*) Other applicable subjects included in military police tactical unit training.

(*d*) Tactical problems which may be given from time to time to determine the effectiveness of the guard force in emergency situations.

(5) Judgment, initiative, imagination, and a cooperative relationship with the plant management are essential in determining the kind and amount of training to be given. Not only will the training requirements vary in different plants, but the requirements within a given guard force may vary. Guards will not be required to attend drill or instruction covering subjects in which they are already trained and qualified. Training films, film strips, and film bulletins are regarded as valuable in the military training of Auxiliary Military Police, and the plant guard officer will encourage their use. The necessary projecting equipment, in which there may be a shortage, may often be borrowed from local clubs and similar organizations. The objective of all training is to increase the efficiency of the Auxiliary Military Police, and unless this is accomplished the plant guard officer has failed in his mission.

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8. *Subjection of auxiliary Military Police to military law.—a. Court martial jurisdiction.*

(1) The commanding generals of service commands have general court martial jurisdiction over the plant guard forces within the geographical limits of their commands. The commanding officer of any War Department owned and operated plant and the commanding officer having jurisdiction over the guard forces (see par. 4*c*) have the power to appoint special and summary courts martial, subject to the right of superior authority to appoint such courts when deemed desirable. The commanding officer having jurisdiction over the plant guard forces may also appoint summary courts martial subject to the same right of superior authority to appoint such courts; except that when the plant guard officer is the only commissioned officer present with a plant guard command, he will be the summary court martial of that command and will hear and determine cases brought before him.

(2) The plant guard officer also has the summary disciplinary authority of a company commander pursuant to Article of War 104. Attention is directed to the fact that an offender may not be summarily punished if he demands trial by court martial and also that if, after consenting to receive summary punishment, he deems his punishment too severe he may appeal to the next superior authority for review. Court martial jurisdiction exists at all times, even while the Auxiliary Military Police are off duty. However, it is inadvisable to order a court martial for offenses committed while off duty and not within the plant premises, unless the offense is directly con-

nected with the individual's duties as a member of the Auxiliary Military Police.

(3). Pending instructions to the contrary, no court-martial proceeding of any nature involving a member of the Auxiliary Military Police will be commenced without the prior approval of the War Department.

b. Discipline.—The institution of a court-martial proceeding will be resorted to only in cases where no other form of punishment will be effective. If the offense involves a violation of a criminal statute or ordinance other than the Articles of War, the individual will be turned over to the civil law enforcement officials.

c. Confinement.—In the absence of an adequate guardhouse or place of confinement, offenders will be confined at the nearest military post having a guardhouse, or turned over to the United States marshal for custody. United States marshals usually have arrangements with the state or local civil authorities for the confinement of prisoners.

d. Punishment.—Unlike the court-martial punishment of a person in military service; a court martial cannot punish a member of the Auxiliary Military Police by reduction in military grade or by forfeiture of pay and allowances. Analogous punishments might be imposed, such as reduction in grade in the guard organization or temporary suspension from duty. A fine, as distinguished from forfeiture, is regarded as an appropriate form of punishment.

e. Dealing with civil authorities.—When a member of the Auxiliary Military Police injures or kills a person while in the performance of his duties, he will be arrested and detained. If a civil police official seeks to arrest him, the plant guard officer, under

the authority of the 74th Article of War, may refuse to release the individual until such release is approved by the commanding general of the service command. A member of the Auxiliary Military Police is entitled to the same protection as a sentinel under similar circumstances. If a writ of habeas corpus is issued for a member of the Auxiliary Military Police held to answer by the military, the procedure of chapter XXVII, Manual for Courts Martial 1928, should be followed.

f. Recognition of meritorious conduct.

(1) Members of the Auxiliary Military Police are eligible for the decoration "Medal of Merit" authorized by the President for award to civilians who distinguish themselves by exceptionally meritorious conduct or by performance of outstanding services. (See Bull. 1, WD, 1943.) All cases of members of the Auxiliary Military Police who, in the opinion of the plant guard officer, deserve consideration for this award will be referred through channels to the office of the Provost Marshal General for transmission to the Medal of Merit Board. A full statement of facts and appropriate recommendations will be included.

(2) Any case of meritorious conduct which in the opinion of the plant guard officer does not warrant recommendation for the award of the Medal of Merit, but which he deems deserving of official commendation, will be the subject of a special order of commendation issued by the commanding officer having jurisdiction over the guard force (see par. 4*c*). Such special orders will be issued promptly and with liberality, and will be given appropriate publicity, particularly among the guard

force concerned. A copy of each such special order will be furnished to the employer.

g. Prior instructions rescinded.—The instructions contained in all other letters and circulars concerning the organization, training and command of plant guard forces except the attached letter are rescinded.

(SPX 231.43 (2–27–43) SPMGS–MP–FH)

By command of Lieutenant General SOMERVELL:

W. D. STYER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:
H. B. LEWIS,
Brigadier General,
Adjutant General.

1 Incl.

WAR DEPARTMENT

THE ADJUTANT GENERAL'S OFFICE

WASHINGTON

AG 231.43 (7–2–42) MS–SPAAM–M

JULY 2, 1942.

SUBJECT: Military Organization of Plant Guard Forces.

TO: The Commanding General;
Matériel Command, Army Air Forces;
The Provost Marshal General;
The Chiefs of Supply Services.

1. Guard forces at all War Department plants, posts and stations controlled or

operated by the Supply Services or by the Army Air Forces, and at all plants assigned for protective survey and inspection to the Chiefs of Supply Services and to the Commanding General, Matériel Command, Army Air Forces, are to be organized, drilled and instructed as military units subject to the Articles of War. (Art. 2 (d).)

2. These guard forces will be organized as a civilian auxiliary to the Military Police in all ammunition plants and plants where the possibility of sabotage is greatest, giving first priority to those plants which are most vulnerable from the standpoint of sabotage activities. The organization of these civilian guard forces will be extended as rapidly as conditions permi to civilian plants having important government contracts. Priorities will be established in collaboration with The Provost Marshal General.

3. At the time any guard force is organized as a civilian auxiliary to the Military Police, the commanding officer having jurisdiction over the guard force will:

a. Cause the Articles of War prescribed by Article 110 thereof to be read and explained to each member of the guard force;

b. Issue orders and regulations setting forth the duties and responsibilities of the guard force;

c. Organize each guard force with a member of the Army of the United States in command and cause each force to be drilled and instructed with a view to supplementing the Army in resisting attack on war material, war premises, and war utilities which the force is assigned to guard.

Inclosure to ASF Circular No. 15.
March 17, 1943.

d. Require each member of the guard force to give a pledge of loyalty to the United States, and to execute an agreement acknowledging that such Articles of War are understood by him and that he is subject to the military law as long as he remains a member of the guard force. (A draft of a form of such agreement is attached.)

By order of the Secretary of War:

/s/ J. A. ULIO,
J. A. Ulio,
Major General,
The Adjutant General.

1 Inclosure.
Draft of Agreement.

COPIES FURNISHED:
The Under Secretary of War;
The Commanding Generals, Army Air Forces; Services of Supply.
The Inspector General;
The Judge Advocate General;
The Chief of Administrative Services
Staff Divisions of the Services of Supply
Divisions of the War Department General Staff.

Agreement between the United States of America and ----------
(Plant Guard)

In order that the existing military forces of the United States may be most effectively employed in combat activity against the enemies of the United States, the United States is approving the employ-

ment of certain guards as a civilian auxiliary to the military police for the purpose of guarding and protecting war material, war premises and war utilities from injury or destruction by the enemy or otherwise, including the making of arrests, as peace officers for violations of Federal laws, as well as for violations of orders and regulations issued by military authority. The United States requires that only persons physically fit, well trained in the use of arms and in the duties incident to their position, and of unquestionable loyalty to the United States be so employed.

Now, therefore, I, _____, who have been or am about to be employed by _____ _____ as a guard at _____ for the purpose of guarding certain war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that:

(1) I will support and defend the Constitution of the United States against all enemies, foreign and domestic;

(2) I will bear true faith and allegiance to the Constitution of the United States;

(3) I will well and faithfully discharge my duty as a civilian auxiliary to the military police to protect war material, war premises, and war utilities against all enemies, foreign and domestic, and will obey any orders issued in connection therewith by the President, as Commander-in-Chief of the Army and Navy of the United States, and by his duly authorized officers.

(4) I acknowledge that the appropriate Articles of War have been read and explained to me, and that in the performance

of my duty to protect such war material, war premises, and war utilities, I am subject to military law during the period of my employment.

(Signature of Plant Guard)

Inclosure to letter, July 2, 1942, AG 231.43 (7-2-42) MS-SPAAM-M.

U. S. GOVERNMENT PRINTING OFFICE: 1942